

§ 800.225

(b) The acquisition or conversion of convertible voting instruments of an entity.

(c) The acquisition of proxies from holders of a voting interest in an entity.

(d) A merger or consolidation.

(e) The formation of a joint venture.

(f) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner.

NOTE TO § 800.224(b): See § 800.304 regarding factors the Committee will consider in determining whether to include the rights to be acquired by a foreign person upon the conversion of convertible voting instruments as part of the Committee's assessment of whether a transaction that involves such instruments is a covered transaction.

Example. Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

§ 800.225 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized "in the United States."

§ 800.226 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United

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States, but only to the extent of its activities in interstate commerce.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary is each also a foreign person should any of them engage in a transaction involving a U.S. business.

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

Example 3. Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.227 U.S. national.

The term *U.S. national* means a citizen of the United States or an individual who, although not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.228 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 800.301 Transactions that are covered transactions.

Transactions that are covered transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person.